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DEC 26 2001

FULWIDER PATTON LEE & UTECH, LLP
LOS ANGELES

James W. Paul
6060 Center Drive 10th Floor
Los Angeles, CA 90045

In re Application of
FERRERA et al.
Application No.: 09/762,539
PCT No.: PCT/US98/25822
Int. Filing Date: 04 December 1998
Priority Date: 05 December 1997
Attorney Docket No.: MICRU: 55261
For: VASOOCLUSIVE DEVICE FOR
TREATMENT OF ANEURYSMS

DECISION ON

PETITION

This decision is in response to applicants' "RENEWED PETITION UNDER 37 CFR 1.47(a)" filed 09 October 2001.

BACKGROUND

On 04 December 1998, applicant filed international application No. PCT/US98/25822 which claimed a priority date of 05 December 1997, and which designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 17 June 1999. A Demand for international preliminary examination in which the United States was elected, was filed on 01 July 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 05 June 1999.

On 08 February 2001, applicant filed a Transmittal Letter (Form PTO-1390) for entry into the national stage in the United States under 35 U.S.C. 371 along with, *inter alia*, the U.S. basic national fee, the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date, and an assertion of small entity status. Applicants also submitted a PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT DESIGNATING THE U.S. ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) along with a declaration signed by three of the four joint inventors and a PETITION FOR APPLICATION ON BEHALF OF NON-SIGNING INVENTOR UNDER 37 CFR 1.47(a) and MPEP 409.03(a). The petition under 37 CFR 1.47(a) was also accompanied by, *inter alia*, a declaration of facts by James W. Paul.

On 21 August 2001, the USPTO mailed a decision granting applicants' petition under 37 CFR 1.137(b) and dismissing applicants' petition under 37 CFR 1.47(a). Specifically, it was noted that factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort had not been provided.

On 09 October 2001, applicants submitted the instant "RENEWED PETITION UNDER 37 CFR 1.47(a)" which was accompanied by a copy of a letter sent to Mr. Kurz dated 31 August 2001 and a copy of a certified mail receipt from the USPS.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h); (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the missing inventor; and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As noted in the decision mailed 21 August 2001, items (1), (3), and (4) have been met.

As to item (2), the steps enumerated by Mr. Paul are sufficient to establish that the Mr. Kurz has been presented with the application papers and has refused to execute the application. The application and papers have been reviewed and have been found to be in compliance with 37 CFR 1.47(a).

CONCLUSION

For the reasons set forth above, applicants' petition under 37 CFR 1.47(a) is GRANTED.


Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the Office of PCT Legal Administration.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being forwarded to the National Stage Processing Branch of the Office

of PCT Operations to continue national stage processing of the application, including the accordation of a 35 U.S.C. 371(c) date of 08 February 2001.



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